

Tracy Sebesta

From: Braithwaite, Jared J. <JBraithwaite@foley.com>
Sent: Tuesday, June 7, 2022 4:24 PM
To: Stuart Lapp; Momanaee, Audrey F.; Steely, Rachel Powitzky
Cc: Bret Davis; Josh Redelman; Wright, Dave; Ryan, Michael F.
Subject: Re: National Oilwell Varco v. Garza et al.
Attachments: 2022.06.07 - Proposed revisions to an mutually agreeable forensic examination protocol.docx

Stuart:

Pursuant to our call this afternoon, please see the attached revisions to the proposed alternative forensic discovery protocol. As you will see, I think the various steps of the protocol are agreed except for the reference to 2 USB storage devices. I have one USB storage device in a sealed envelope such that I do not know its serial number. If you want us to list the serial number in an agreement, then please indicate that you do not object to me unsealing the envelope with the USB drive and plugging the drive into my computer to retrieve the serial number. Also, if you can provide further information about the supposed second USB storage device, then that may help us determine what it is. As of right now, we have no idea what that second USB device is or whether it, in fact, remains in NOV's possession. (We'll have to pass this proposal by Garza's counsel for approval as well.)

But, as indicated throughout this process, Defendants are willing to produce and cooperate in the production of information--but not on the condition of waiving Defendants' rights to challenge the improper venue and ex parte orders that are contrary to Texas law.

Best regards,

Jared J. Braithwaite

Partner

Foley & Lardner LLP | Salt Lake City, UT
Phone 801.401.8920
[Visit Foley.com](http://VisitFoley.com) | jbraithwaite@foley.com



From: Stuart Lapp <slapp@stibbsco.com>
Sent: Monday, June 6, 2022 3:13 PM
To: Braithwaite, Jared J. <JBraithwaite@foley.com>; Momanaee, Audrey F. <amomanaee@balch.com>; Steely, Rachel Powitzky <rsteely@foley.com>
Cc: Bret Davis <bdavis@stibbsco.com>; Josh Redelman <jredelman@stibbsco.com>; Wright, Dave <DRWright@foley.com>; Ryan, Michael F. <mryan@foley.com>
Subject: RE: National Oilwell Varco v. Garza et al.

**** EXTERNAL EMAIL MESSAGE ****

Jared:

As discussed, here are our redlines to the proposed forensic protocol that you sent over earlier today. As we discussed on the phone, NOV is willing to agree to modify the forensic examination protocol in exchange for the Defendants' agreement to not challenge venue in Grimes County. I am available to get on a call to discuss.

Stuart W. Lapp

Managing Partner

Stibbs & Co., P.C., Attorneys

819 Crossbridge Dr., Spring, Texas 77373

P: 281-367-2222 **F:** 281-681-2330

D: 281-323-6040 **C:** 713-416-6233

slapp@stibbsco.com | www.stibbsco.com



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From: Braithwaite, Jared J. <JBraithwaite@foley.com>

Sent: Monday, June 6, 2022 3:54 PM

To: Stuart Lapp <slapp@stibbsco.com>; Momanaee, Audrey F. <amomanaee@balch.com>; Steely, Rachel Powitzky <rsteely@foley.com>

Cc: Bret Davis <bdavis@stibbsco.com>; Josh Redelman <jredelman@stibbsco.com>; Wright, Dave <DRWright@foley.com>; Ryan, Michael F. <mryan@foley.com>

Subject: RE: National Oilwell Varco v. Garza et al.

Stuart:

Will you provide us with an update on when you will be able to provide the Rule 11 extension agreement that we discussed on our call?

Thanks,

Jared J. Braithwaite
Partner

Foley & Lardner LLP | Salt Lake City, UT
Phone 801.401.8920
Visit Foley.com | jbraithwaite@foley.com



From: Braithwaite, Jared J.
Sent: Monday, June 6, 2022 8:55 AM
To: Stuart Lapp <slapp@stibbsco.com>; Momanaee, Audrey F. <amomanaee@balch.com>; Steely, Rachel Powitzky <rsteely@foley.com>
Cc: Bret Davis <bdavis@stibbsco.com>; Josh Redelman <jredelman@stibbsco.com>; Wright, Dave <DRWright@foley.com>; Ryan, Michael F. <mryan@foley.com>
Subject: RE: National Oilwell Varco v. Garza et al.

Counsel:

Thank you for the call this morning. Please see the following proposed discovery protocol regarding the devices and information at issue. We look forward to discussing this with you further this afternoon.

1. Counsel for Garza and Array will collect the following electronic devices and storages:
 - 1.1. The laptop issued to Garza by Array for performance of his job duties for Array.
 - 1.2. The mobile phone issued to Garza by Array for performance of his job duties for Array.
 - 1.3. The USB storage drive used by Garza that to the best of his knowledge is the drive referenced by Exhibit C to the Petition.
 - 1.4. Array's email and storage for Garza.
2. By June 8, the parties will agree on a digital forensics vendor to forensically image the laptop, mobile phone, and USB storage with costs for the imaging borne by Plaintiff.
3. The parties will immediately confer regarding appropriate search terms and phrases designed to target information on the USB drive that Plaintiff contends embody its asserted trade secrets or confidential information. Defendants' counsel will use agreed search terms and phrases to search the USB drive for any files including the agreed search terms and phrases.
4. Within 3 days of forensic imaging of the USB drive and an agreement on the list of search terms and phrases, Defendants' counsel will produce to Plaintiff's counsel a copy of those files from the USB drive that include the agreed search terms and phrases.
5. Within 3 days of production of the files from the USB drive that include the search terms and phrases, Plaintiff will provide its confidentiality designations for those files along with a list of the files that Plaintiff contends embody its asserted trade secrets or confidential information. Within 5 days, Defendants' counsel will use the agreed search terms and phrases to search Garza's laptop, mobile phone, email and storage and provide a search report to Plaintiff regarding files that match the filename or the MD5 hash of the files that Plaintiff identified.
6. The parties will confer in good faith regarding further steps or destruction of information, if any, and attempted early resolution of the matter.
7. The above procedure, including the production of files and documents, and any disputes regarding the same, will be governed by the provisions of the current Protective Order and the Texas Rules of Civil Procedure. The parties may also confer on an amended and agreed form of protective order to replace the current Protective Order including the following:
 - 7.1. Instead of only 5 days to designate information in a deposition as confidential or highly confidential, the parties will endeavor to designate a deposition transcript as confidential or highly confidential on the record during the deposition. Notwithstanding, even if a deposition transcript or portions thereof are not

designated as confidential or highly confidential at the time of the deposition, a party may designate a deposition transcript or portion thereof as confidential or highly confidential at any time at which point the transcript will be treated as designated until the Court rules on any dispute as to confidentiality.

- 7.2. In addition to the permissible recipients in paragraph 4 of the current protective order, highly confidential information may also be made available to any witness during the course of discovery, so long as it is stated on the face of each document designated highly confidential information being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated highly confidential information to the officers, directors, and managerial level employees of the party producing such highly confidential information, or to any employee of such party who has access to such highly confidential information in the ordinary course of such employee's employment.
- 7.3. The parties agree that all 76a sealing orders are unopposed. Likewise, the assertion of trade secret or confidential information in a 76a motion to seal has no bearing on the legal nature of such documents or the ability to challenge previously designated documents.

Best regards,

Jared J. Braithwaite
Partner

Foley & Lardner LLP | Salt Lake City, UT
Phone 801.401.8920

-----Original Message-----

From: Stuart Lapp <slapp@stibbsco.com>

Sent: Sunday, June 5, 2022 6:03 PM

To: Momanaee, Audrey F. <amomanaee@balch.com>; Steely, Rachel Powitzky <rsteely@foley.com>

Cc: Braithwaite, Jared J. <JBraithwaite@foley.com>; Bret Davis <bdavis@stibbsco.com>; Josh Redelman <jredelman@stibbsco.com>; Wright, Dave <DRWright@foley.com>; Ryan, Michael F. <mryan@foley.com>

Subject: RE: National Oilwell Varco v. Garza et al.

** EXTERNAL EMAIL MESSAGE **

Audrey:

Thank you for the email. Your v-card is blank, perhaps a glitch on my end. Do you have time for a call in the morning?

Stuart W. Lapp
Managing Partner
Stibbs & Co., P.C., Attorneys
819 Crossbridge Dr., Spring, Texas 77373
P: 281-367-2222 F: 281-681-2330
D: 281-323-6040 C: 713-416-6233

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-----Original Message-----

From: Momanaee, Audrey F. <amomanaee@balch.com>

Sent: Sunday, June 5, 2022 6:39 PM

To: Steely, Rachel Powitzky <rsteely@foley.com>

Cc: Braithwaite, Jared J. <JBraithwaite@foley.com>; Stuart Lapp <slapp@stibbsco.com>; Bret Davis <bdavis@stibbsco.com>; Josh Redelman <jredelman@stibbsco.com>; Wright, Dave <DRWright@foley.com>; Ryan, Michael F. <mryan@foley.com>

Subject: Re: National Oilwell Varco v. Garza et al.

All,

Please see attached.

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Regards,

Audrey F. Momanaee

[[image]]

Audrey F. Momanaee, Partner, Balch & Bingham LLP

811 Louisiana Street • Suite 1010 • Houston, TX 77002

t: (713) 362-2557 f: (866) 230-9950 e: amomanaee@balch.com

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<[https://urldefense.com/v3/__http://www.balch.com__;!!L2Ps738!2n27dLNcHi-P15n846H5PKUnXo0Dh6r1cutRFD5PtCfGW75sNTXEaynelbLUI9a_L2lkP4Y2hdQcZiqGCA\\$](https://urldefense.com/v3/__http://www.balch.com__;!!L2Ps738!2n27dLNcHi-P15n846H5PKUnXo0Dh6r1cutRFD5PtCfGW75sNTXEaynelbLUI9a_L2lkP4Y2hdQcZiqGCA$)

>[https://urldefense.com/v3/__http://www.balch.com__;!!L2Ps738!2n27dLNcHi-P15n846H5PKUnXo0Dh6r1cutRFD5PtCfGW75sNTXEaynelbLUI9a_L2lkP4Y2hdQcZiqGCA\\$](https://urldefense.com/v3/__http://www.balch.com__;!!L2Ps738!2n27dLNcHi-P15n846H5PKUnXo0Dh6r1cutRFD5PtCfGW75sNTXEaynelbLUI9a_L2lkP4Y2hdQcZiqGCA$)

>

On Jun 5, 2022, at 5:45 PM, Steely, Rachel Powitzky <rsteely@foley.com> wrote:

[External Email] Please use caution.

Thank you for taking the time to speak to us regarding the NOV lawsuit. We wanted to summarize the issues of our discussion:

- The forensic order – Array requests Plaintiff pull down the forensic order and is agreeable to negotiating a forensic protocol regarding the devices at issue. Array believes the forensic order does not comply with Texas law and is too vague to be enforced in any event. However, Array also understands the primary goal to determine the whereabouts of NOV information, if any, and is willing to cooperate in this regard. We will send a proposed protocol shortly.
- Venue – Venue is mandatory in Harris County based on the face of the pleadings. The Texas venue statute as well as Mr. Garza's NOV contract, which serves as the basis of the breach of contract and tortious interference claim, both require venue in Harris County. We are not familiar with any legal mechanism to toll a venue decision but are open to the concept. If you could provide the statute or case law that provides for tolling we are happy to put this issue on the back burner. Otherwise, we will need to proceed on Monday with a Motion to Transfer Venue.

In addition, I would like to introduce Mr. Garza's counsel, Audrey Momanaee. Please include Audrey on all correspondence. She will send her vcard.

Rachel

Rachel Powitzky Steely
Foley & Lardner LLP | Houston, TX
O 713.276.5605
C 713.419.7581

From: Braithwaite, Jared J. <JBraithwaite@foley.com>
Sent: Saturday, June 4, 2022 1:29 PM
To: Stuart Lapp <slapp@stibbsco.com>; Bret Davis <bdavis@stibbsco.com>; Josh Redelman <jredelman@stibbsco.com>
Cc: Wright, Dave <DRWright@foley.com>; Steely, Rachel Powitzky <rsteely@foley.com>
Subject: Re: National Oilwell Varco v. Garza et al.

Stuart:

3:45 CT works for us. Please include David Wright and Rachel Steely on the invitation. We look forward to speaking with you then.

Best regards,

Jared J. Braithwaite

Partner

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From: Stuart Lapp <slapp@stibbsco.com<mailto:slapp@stibbsco.com>>
Sent: Saturday, June 4, 2022 12:12 PM
To: Braithwaite, Jared J. <JBraithwaite@foley.com<mailto:JBraithwaite@foley.com>>; Bret Davis <bdavis@stibbsco.com<mailto:bdavis@stibbsco.com>>; Josh Redelman <jredelman@stibbsco.com<mailto:jredelman@stibbsco.com>>
Cc: Wright, Dave <DRWright@foley.com<mailto:DRWright@foley.com>>; Sisserson, Rachel <rsisserson@foley.com<mailto:rsisserson@foley.com>>
Subject: RE: National Oilwell Varco v. Garza et al.

** EXTERNAL EMAIL MESSAGE **

Mr. Braithwaite:

Thank you for your email. I am available both this afternoon and tomorrow morning to confer. Today after 3:00 pm CDT would be best but I can be available earlier today if that is better for you. If you want to wait until tomorrow let me now what time in the morning works for you.

Let me know your time preference I will send you an invitation for a Teams call.

Thanks,

Stuart

Stuart W. Lapp

Managing Partner

Stibbs & Co., P.C., Attorneys

819 Crossbridge Dr., Spring, Texas 77373

P: 281-367-2222 F: 281-681-2330

D: 281-323-6040 C: 713-416-6233

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From: Braithwaite, Jared J. <JBraithwaite@foley.com<<mailto:JBraithwaite@foley.com>>>
Sent: Saturday, June 4, 2022 12:41 PM
To: Stuart Lapp <slapp@stibbsco.com<<mailto:slapp@stibbsco.com>>>; Bret Davis <bdavis@stibbsco.com<<mailto:bdavis@stibbsco.com>>>; Josh Redelman <jredelman@stibbsco.com<<mailto:jredelman@stibbsco.com>>>
Cc: Wright, Dave <DRWright@foley.com<<mailto:DRWright@foley.com>>>; Sisserson, Rachel <rsisserson@foley.com<<mailto:rsisserson@foley.com>>>
Subject: National Oilwell Varco v. Garza et al.

Counsel:

We have been retained by Array Technologies, Inc. to represent it in connection with National Oilwell Varco v. Garza et al. Given your representations to the Court about the emergency nature of the petition and motions, we trust that you can be available this weekend to discuss those issues. Will you please let us know when we can confer on the matter this afternoon or tomorrow morning?

Sincerely,

Jared J. Braithwaite

Partner

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